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4 **UNITED STATES DISTRICT COURT**

5 **DISTRICT OF NEVADA**

6 ROGER JAMES GIFFORD,

)

7 Plaintiff,

)

8 vs.

)

9 UNITED STATES OF AMERICA et al.,

)

**ORDER**

10 Defendants.

)

11 )

12 Plaintiff Roger James Gifford sued three Defendants in this Court for the return of his  
13 property, attaching the Complaint to a motion to proceed *in forma pauperis*. The magistrate  
14 judge granted the motion and screened the Complaint pursuant to 28 U.S.C. §1915, but rather  
15 than recommend dismissal, the magistrate judge dismissed directly, giving Plaintiff thirty (30)  
16 days to amend. Plaintiff has amended but has also filed a motion asking this Court to review the  
17 dismissal order.

18 The Court interprets the motion as one for relief from judgment pursuant to Rule  
19 60(b)(4). That is, the magistrate judge's dismissal order is void for a lack of statutory  
20 jurisdiction to enter it. Decisions dispositive of a case, such as decisions to dismiss a claim, may  
21 not be referred to a magistrate judge for final determination, 28 U.S.C. § 636(b)(1)(A), unless the  
22 parties consent, *id.* § 636(c)(1). In the absence of consent, a magistrate judge may only issue a  
23 report and recommendation for final determination by a district judge. *Id.* § 636(b)(1)(B)–(C).  
24 The Court therefore grants the motion under Rule 60(b)(4). *See David v. Dist. of Columbia*, 252  
25 F.R.D. 56, 59 (D.D.C. 2008).

The Court will not examine the merits of the screening order but will vacate the order in part (as to dismissal). Plaintiff shall have twenty-eight (28) days to further amend in order to add any claims dismissed from the original Complaint.

## CONCLUSION

IT IS HEREBY ORDERED that the Motion for Relief from Judgment (ECF No. 6) is GRANTED IN PART.

IT IS FURTHER ORDERED that the Order (ECF No. 4) is VACATED IN PART, as to the dismissal of the Complaint.

IT IS FURTHER ORDERED that Plaintiff shall have twenty-eight (28) days to amend to add any claims dismissed from the original Complaint.

IT IS SO ORDERED.

Dated this 27th day of May, 2014.

ROBERT C. JONES  
United States District Judge

ROBERT C. JONES  
United States District Judge